



California Fair Political Practices Commission

January 9, 1987

The Honorable Jim Nielsen
State Senator
State Capitol, Room 2083
Sacramento, CA 95814

Re: Your Request for Advice
Our File No. I-86-329

Dear Senator Nielsen:

You have requested advice regarding your duties under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/} Your letter states only a general question concerning conflict issues raised by your service as a director of a for-profit corporation and does not mention any specific decision currently pending. Therefore, we consider your letter a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed).

QUESTION

What duties are imposed on you by the Act as a result of your employment as a director of a for-profit corporation?

CONCLUSION

You are not required by the Act to disqualify yourself unless the decision will affect the corporation in a manner different than it will affect others in the same industry or trade. You must report income received from the corporation on your annual statement of economic interests.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

FACTS

You are a member of the California State Senate. You are considering serving as a member of the board of directors of a for-profit corporation. You will receive compensation for your service, including reimbursement of expenses.

ANALYSIS

Section 87100 prohibits a public official from making, participating in, or attempting to influence a governmental decision in which he knows or has reason to know he has a financial interest. Section 87100 applies to state legislators, who are public officials within the meaning of Section 87100.^{2/} (Sections 82048, 82049.)

A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or a member of his immediate family or on, among other things:

Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(d).

As a director of the corporation, you will be required to disqualify yourself from participating in a particular decision if the decision would have a foreseeable material financial effect on the corporation, distinguishable from its effect on the public generally.^{3/} Disqualification would be required even if you would not personally benefit from the transaction.

^{2/} However, the remedies provided in the Act for violations of Section 87100 are not applicable to elected state officers, including state legislators. (Section 87102.)

^{3/} The same analysis applies to the corporation as a source of income to you if you receive income of \$250 or more within 12 months prior to the time the decision is made. (See Section 87103(c).) The analysis is not repeated here since the corporation will presumably only be a source of income to you as a director. Therefore, the scope of your duty to disqualify would be the same under either analysis.

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Regulation 18703 provides that a material financial effect on an official's interest is distinguishable from its effect on the public generally unless the decision will affect the official's interest in substantially the same manner as it will affect all members of the public or a significant segment of the public. In the case of an elected state officer, an industry, trade or profession constitutes a significant segment of the public generally. (Regulation 18703(a) (copy enclosed).)

The particular facts of each decision you face will be determinative of the disqualification issue. However, you are not likely to be required to disqualify yourself unless the particular decision you face will affect the corporation differently than others in the same industry or trade.

You have asked for advice on your reporting obligations regarding your new employment. As you know, you must file annual statements of economic interests disclosing income received during the period since your previous statement was filed. (Section 87203.) The definition of "income" includes salary, gifts, loans, reimbursement for expenses, and various other payments. (Section 82030.) If you receive income of \$250 or more from the corporation, your annual statement must contain the name and address of the corporation, which is the source of income to you, a general description of its business activity, and a description of the consideration, if any, for which the income was received. (Section 87207(a)(1),(3).) It must also include:

A statement whether the aggregate value of income from each source, or in the case of a loan, the highest amount owed to each source, was at least two hundred fifty dollars (\$250) but did not exceed one thousand dollars (\$1,000), whether it was in excess of one thousand dollars (\$1,000) but was not greater than ten thousand dollars (\$10,000), or whether it was greater than ten thousand dollars (\$10,000).

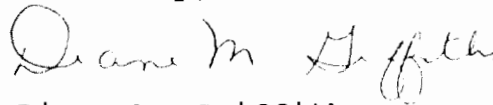
Section 87207(a)(2).

Your letter does not mention any investment you may own in the corporation. Therefore, I have not analyzed the effect of such investments on your disqualification or reporting duties under the Act. If you have any questions concerning other payments or investments or concerning this letter, you may contact me at (916) 322-5901.

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Let me note in closing that the Commission's advice-giving function is limited to questions under the Political Reform Act. We cannot provide advice regarding Section 1090.^{4/} You should contact the Attorney General's Office regarding interpretation of Section 1090.

Sincerely,



Diane M. Griffiths
General Counsel

DMG:sm
Enclosures

^{4/} Section 1090 provides:

Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be financially interested in any contract made by them in their official capacity, or by any body or board of which they are members. Nor shall state, county, district, judicial district, and city officers or employees be purchasers at any sale or vendors at any purchase made by them in their official capacity.

As used in this article, "district" means any agency of the state formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries.

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TRACI BARTHOLOMEW
ASSISTANT TO THE FLOOR LEADER

JIM NIELSEN
REPUBLICAN FLOOR LEADER

December 3, 1986

Mr. Michael Montgomery, Esq.
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, California 95814

Dear Mr. Montgomery:

This is to request a legal opinion from the Fair Political Practices Commission on the applicable conflict-of-interest reporting and disclosure requirements if, as a state legislator, I agree to serve as a member of the Board of Directors of a for-profit corporation and receive regular director's compensation, including reimbursement of expenses, for attending periodic meetings of the corporation's Board of Directors.

Thank you very much for your assistance. If any additional factual information is needed for the Commission to render advice, I would be glad to provide it.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Nielsen". Below the signature, the name "JIM NIELSEN" is printed in a sans-serif font.

JIM NIELSEN



California Fair Political Practices Commission

December 10, 1986

Senator Jim Nielsen
California State Senate
State Capitol, Room 305
Sacramento, CA 95814

Re: 86-329

Dear Senator Nielsen:

Your letter to Commissioner Montgomery requesting advice under the Political Reform Act was received and referred to me on December 8, 1986. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days. You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script, reading "Diane M. Griffiths", is written over the typed name.

Diane M. Griffiths
General Counsel

DMG:plh